

Testimony in favor of 2011 Senate Bill 12
Before the Kansas Senate Judiciary Committee
January 31, 2011
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Thank you members of the Judiciary Committee. I come before you in support of Senate Bill 12 to create a Kansas state law exemption for EIC for use in bankruptcy.

I have represented Kansas individuals and small business proprietors in bankruptcy since 1982. I was the attorney in the 10th Circuit case called Montgomery. (In Re Montgomery, 224 F.3d 1193, 1194 (10th Cir. 2000)).

Montgomerys' attempt to exempt EIC in their bankruptcy was rejected. The circuit court said an specific exemption for EIC is required. The general exemption for social welfare in K.S.A. 39-717 is not sufficient.

38-717(c) None of the money paid, payable, or to be paid, or any tangible assistance received under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Many states have specific EIC exemptions or an exemption for any property up to a certain limit that can be used for EIC. The status of other state laws is listed on page 38-41 of "When Welfare Becomes Work Support: Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy", American Bankruptcy Law Journal, Summer, 2004. A summary is attached to this testimony.

I urge you to adopt Senate Bill 12. Thank you.

Earned Income Tax Credit

Earned Income Tax Credit (EITC or EIC) is a **refundable tax credit** designed to encourage low-income workers and offset the burden of U.S. payroll taxes. Both the United States and the State of Kansas have the EITC.

EIC recipients must have a minimum amount of earned income and at least one qualifying child sharing their residence. The credit phases out for earned income over \$43,352. Maximum credit is \$4050 to \$5666 depending on income and number of children.

There is a much more modest EIC for persons and couples without children with earned income of \$5980 to \$13,460. The maximum EIC is \$457.

Enacted in 1975, the EIC has been expanded many times, including the more widely-publicized Reagan EIC expansion of 1986. Today, the EITC is one of the largest anti-poverty tools in the United States, and enjoys broad bipartisan support.

Kansas is one of at least 20 states with their own EIC. Kansas residents claiming an EIC on their Federal return, may claim an EIC on their Kansas income tax return. Nonresidents cannot claim the Kansas EIC. **The Kansas EIC is 17% of the federal EIC.**

<http://www.ksrevenue.org/faqs-taxii.htm>

The EIC has significant impact on the lives and the communities of the nation's lowest paid workers. The EIC encourages more work during the phase in period to qualify for a larger EIC. It lifts the lowest paid working people above the federal poverty line. Dollars are spent in local communities on commodities and services.

Economists suggest that every increased dollar received by low and moderate-income families has a multiplier effect of between 1.5 to 2 times the original amount, in terms of its impact on the local economy and how much money is spent in and around the communities where these families live.

Source: http://en.wikipedia.org/wiki/Earned_Income_Tax_Credit

I. Exemption of the Federal Earned Income Tax Credit in states that do not allow people who file for bankruptcy to choose the federal exemptions under § 522(b) and (d) (“Opt-out states”).

1. Alabama “Public assistance to needy persons” is exempt. Case law says EITC is covered by this exemption.
2. Arizona Statutory chapter on state welfare assistance programs is not subject to operation of any bankruptcy law. Case law says EITC is not exempt under state law.
3. California Aid under state Welfare and Institutions Code is exempt. EITC is either not exempt or whether it is exempt is unclear.
4. Colorado Express exemption for EITC. Colo. Rev. Stat. § 13-54-102(1)(o) (West 2009).
5. Delaware Statutory chapter on public assistance says assistance under it is not subject to operation of bankruptcy law. EITC is either not exempt under this provision or whether it is exempt is unclear. Separate exemption provided for property with aggregate fair market value of not more than \$5,000 (excluding retirement plans).
6. Florida Express exemption for EITC (by reference to § 32 of the Internal Revenue Code). Fla. Stat. § 225.25(3) (West 2009).
7. Georgia Exemption provided for a local public assistance benefit. EITC is not exempt under this provision.
8. Idaho Exempts benefits under “federal, state, or local public assistance legislation.” Case law says this covers EITC.
9. Illinois Exempts public assistance benefit, which case law says covers EITC.
10. Indiana No exemption available that even arguably covers EITC.
11. Iowa Exempts “public assistance benefit,” which case law says covers EITC. Iowa Code § 627.6(8)(a) used to cover a “local public assistance benefit” but was amended to say “any public assistance benefit.”

12. Kansas The Social Welfare chapter of Kan. Stat. Ann. (K.S.A. 2008 Supp. 39-717(c)) says benefits under that act are not subject to legal process, or to the operation of any bankruptcy law; K.S.A. 60-2313(a)(2) exempts public assistance benefits covered by K.S.A. 39-717.
13. Kentucky Non-commingled public assistance is not assignable and is exempt from levy or execution, which case law says sometimes makes EITC exempt. Kentucky also has a \$1,000 wildcard exemption for people who file for bankruptcy.
14. Louisiana Express exemption for EITC, except for seizure by the state department of revenue or arrears in child support payments. La. Rev. Stat. Ann. § 12:3881 (2009) (Added in 2004.)
15. Maine Exempts a local public assistance benefit. EITC is not exempt under this provision.
16. Maryland Assistance under specified subtitle of state statutes is not subject to bankruptcy law. EITC is either not exempt or whether it is exempt is unclear. Md. Code Ann., Cts. & Jud. Proc. § 11-504(b)(5) provides exemption for up to \$6,000 worth of cash or other property.
17. Mississippi Exempts public benefits for disabled, blind, and the elderly. EITC is either not exempt or whether it is exempt is unclear.
18. Missouri Exempts local public assistance benefit. Case law says EITC not covered because it is not a "local" benefit. Head of household may claim exemption for up to \$1,250 plus \$350 per minor child or disabled dependent. EITC that qualifies as a married couple's entireties property would be exempt from creditors with claims against only one spouse.
19. Montana Assistance under chapter about administration of public assistance is not subject to any bankruptcy law. EITC is either not exempt or whether it is exempt is unclear.
20. Nebraska Exempts county and state assistance. State supreme court said EITC is a "means-tested public assistance benefit"

excluded from child support income calculations. EITC is either not exempt or whether it is exempt is unclear.

21. Nevada Statutory chapter about public welfare says assistance under it is not subject to the operation of any bankruptcy law. Case law says EITC is not exempt under this provision.
22. New York Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. A debtor who claims no homestead exemption can claim up to \$2,500 in cash or yet-to-be-received tax refund (including federal refund).
23. North Carolina Allows wildcard exemption up to \$3,500 under certain circumstances that could be used to exempt EITC.
24. North Dakota Exempts aid to families with dependent children under statutory chapter; allows wildcard exemption of \$7,500 (in addition to other specific exemptions) to resident who claims no homestead exemption; allows head of family a wildcard exemption of \$5,000 (in addition to other specific exemptions); allows a single person a wildcard exemption of \$2,500.
25. Ohio Express exemption for EITC. Ohio Rev. Code Ann. § 2329.66 (2009).
26. Oklahoma Provides undue hardship exemption for part of earnings from personal services necessary for maintenance of family or other dependents. Case law says this covers EITC. Other exemptions held not to cover EITC.
27. Oregon Express exemption for EITC. Or. Rev. Stat. Ann. § 18.345(1)(n) (West 2009).
28. South Carolina Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
29. South Dakota Statutory chapter about temporary assistance for needy families exempts assistance provided under it. EITC is either not exempt or whether it is exempt is unclear. Provides

wildcard exemption for personal property, but might be needed for vehicles, furnishings, and other personal property, as well as EITC.

30. Tennessee Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. Statutory chapter on programs and services for children says assistance under it is not subject to any bankruptcy law. Tennessee has a wildcard exemption for up to \$4,000 that can be used to exempt EITC. Tenn. Code Ann. § 26-2-103 (West 2009).
31. Utah Statutory chapter on workforce services says public assistance provided under it is not subject to any bankruptcy law.
32. Virginia Provides wildcard exemption that might protect large EITC payment, depending on value of homestead exemption debtor claims.
33. West Virginia Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
34. Wyoming Statutory chapter exempts public assistance and social services provided under it. Case law says EITC is not exempt under that chapter.

II. Exemption of the Federal Earned Income Tax Credit in states that allow people who file for bankruptcy to choose under § 522(b) either the exemptions provided in § 522(d) (“the federal exemptions”) or the exemptions provided by state law (and other federal law).

A debtor who chooses the federal exemptions, as allowed by these 16 states, can claim a wildcard exemption for property worth up to \$1,075, plus up to \$10,125 of unused part of the exemption amount allowed for a residence. § 522(d)(1) & (5). (These dollar amounts may be adjusted on April 1, 2010).

There have apparently been almost no reported decisions in these states about exempting the EITC under § 522(d) or under state exemption laws.

States that have not opted out of the federal exemptions

1. Alaska
2. Arkansas
3. Connecticut
4. Hawaii
5. Massachusetts
6. Michigan
7. Minnesota
8. New Hampshire
9. New Jersey
10. New Mexico
11. Pennsylvania
12. Rhode Island
13. Texas
14. Vermont
15. Washington
16. Wisconsin

Case law says a debtor who chose the federal exemptions could not exempt the EITC under § 522(d)(10) as a “local public assistance benefit,” but a debtor who chose the state exemptions could exempt the EITC under a Minnesota statute as “relief based on need.”